

**NOTICE TO THE DIRECT MAIL INDUSTRY AND SELLERS OF ADVERTISING AND
PROMOTIONAL MATERIAL**

New Jersey Sales and Use Tax Act – Streamlined Legislation
(P.L. 2005, c.126)
Effective October 1, 2005
(REVISED 9/22/05)

Through the enactment of Public Law 2005, chapter 126, New Jersey joined a national coalition of states in conforming the New Jersey Sales and Use Tax Act to the provisions of the Streamlined Sales and Use Tax Agreement (SSUTA). The SSUTA was developed over the course of several years through the joint effort of over forty states participating in the Streamlined Sales and Use Tax Project. The underlying purpose of the Agreement is to simplify and modernize the administration of the sales and use tax laws of the member states in order to facilitate multi-state tax administration and compliance. The provisions of New Jersey's law are effective on October 1, 2005.

Definition (N.J.S.A. 54:32B-2(ss))

The new law defines "direct mail" as printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. For example, if product samples are included with the printed material, it still is treated as direct mail. "Direct mail" does not include multiple items of printed material delivered to a single address, for example, a shipment of flyers in bulk to the purchaser.

Although the exemption in the law for direct mail material delivered to out-of-State recipients remains applicable, the new law substitutes the term "direct mail" for the prior law's phrase "advertising and promotional material." N.J.S.A. 54:32B-8.39. This creates changes in the application of the N.J.S.A. 54:32B-8.39 exemption. (See below section "Affect of New Law on Advertising and Promotional Material That is NOT Packaged with Printed Material")

Exemption and Sourcing (N.J.S.A. 54:32B-3.3)

The exemption in the law for advertising and promotional material delivered to out-of-State recipients remains applicable **as long as such material meets the definition of direct mail**. N.J.S.A. 54:32B-8.39. Thus, purchasers of direct mail in New Jersey are provided an exemption from sales and/or use tax in this State for any portion of such property ultimately delivered to other persons free-of-charge for use or consumption outside New Jersey. In other words, the law provides an exemption for direct mail delivered to out-of-State recipients, as well as for the direct mail processing services that are performed in connection with such material. N.J.S.A. 54:32B-3(b)(5). Separately stated charges for postage are not taxable.

A purchaser of direct mail should provide to the seller a direct mail form OR information to show the states in which the direct mail is to be delivered to recipients. Acceptable direct mail forms are the New Jersey Exempt Use Certificate (Form ST-4) or the Streamlined Sales Tax Agreement Certificate of Exemption (uniform form).

The Certificate of Exemption form may be acquired from:

http://www.streamlinedsalestax.org/stl_exempt_1103.pdf. In the "Reason for exemption" section, the taxpayer should circle "L," the line labeled "direct mail." Note that New Jersey does

not issue specific identification numbers for direct mailers, so a “direct mail number” is not required. You may acquire Form ST-4 from the Division’s website located at: www.state.nj.us/treasury/taxation.

- If the purchaser provides a direct mail form, the seller shall be relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser shall be obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.
- If the purchaser provides information showing the states to which the direct mail is to be delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller shall be relieved of any further obligation to collect tax on any transaction for which the seller has collected tax pursuant to the delivery information provided by the purchaser. The purchaser may use Form ST-4 in order to document the allocation for out-of-State delivery.

If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information, the seller is required to collect sales tax on the entire amount.

Effect of New Law on Advertising/Promotional Material that is NOT Packaged With Printed Material (N.J.S.A. 54:32B-8.39)

The new law substitutes the term “direct mail” for the term “advertising and promotional material.” Under prior law, the Division extended the exemption provision at N.J.S.A. 54:32B-8.39 to tangible personal property delivered by itself; for example, a company purchases a case of pens with the company logo or promotional videotapes, for use at a trade show or by sales representatives. The application of this exemption allowed the purchaser to take delivery of the advertising or promotional tangible personal property in New Jersey without paying tax. The purchaser would then self-assess use tax based upon where the property was actually used.

Under the new law, tangible personal property sold by itself, even if advertising or promotional in nature, does not meet the definition of “direct mail,” so the Section 8.39 exemption no longer is applicable. In the absence of this exemption, the tax will be due on all such tangible property when the customer takes delivery in New Jersey, regardless of whether it will then be distributed or used out of State.

Since these are not direct mail purchases, the direct mail sourcing rule is not applicable and the Certificate of Exemption cannot be used. In addition, the use of the ST-4 is no longer allowed, since that form was used to support a claim for exemption under Section 8.39, which now only applies to direct mail.

Note that the amendments to Section 8.39 do not affect the taxability of printed material like brochures, flyers, etc., or printed material that is packaged with tangible personal property, since they fit within the definition of direct mail.

Transitional Rules

Since this is a significant change from the treatment of such property under prior law, the following transitional rule will apply to sales of advertising/promotional material that is not packaged with printed material:

- Sales made before October 1, 2005, with delivery on or after October 1, 2005: If the tangible personal property was sold prior to October 1, but the property was not delivered to the purchaser until on or after that date, the sale will be treated under the prior law. Thus, the ST-4 can be provided to the seller to exempt the portion of the advertising or promotional tangible personal property that is ultimately delivered to out of State recipients.
- Sales made on and after October 1, 2005: The general sourcing rule for sales of tangible personal property will apply. Thus, if the property is received at the seller's business location, it is sourced to that location; if the property is not received at the seller's business location, then the sale is sourced to the location where the purchaser takes delivery. N.J.S.A. 54:32B-3.1.

You may view the law at the New Jersey Legislature's website located at www.njleg.state.nj.us under "Chapter Laws."